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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,066	09/12/2003	Quy Duc Bui	13996-357	1936

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EXAMINER
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KIM, CHRISTOPHER S

ART UNIT	PAPER NUMBER
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3752

DATE MAILED: 03/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/662,066

Applicant(s)

BUI, QUY DUC

Examiner

Christopher S. Kim

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 January 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) 30-42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-29 is/are rejected.
- 7) ☒ Claim(s) 2 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 January 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

1. The response filed January 9, 2006 is acknowledged.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Election/Restrictions***

3. Claims 30-42 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Invention and Species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on March 31, 2005.

### ***Drawings***

4. The drawing new sheet containing new figures 10 and 11 were received on January 9, 2006. These drawings are unacceptable. The new figures contain new matter.

New figure 10 shows a shape and configuration of nozzle body 240 which was not disclosed by the disclosure as originally filed. It shows shape details of nozzle body 240 in greater detail than disclosed by claims 5 and 21.

New figure 20 shows sprays tip 20 which is flush with body 340 which was not disclosed by the disclosure as originally filed. Additionally, the figure fails to show any welds.

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "flexible spray tip is molded to the nozzle body" recited in claims 5 and 21; the "spray tip is welded against the nozzle body" recited in claim 22 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

6. Claims 13-15 and 23-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 13-15 were withdrawn because they were directed to specific embodiment of the drive assembly. Applicant elected Species A (elastomeric material) on April 27, 2005 per the Restriction/Election requirement mailed on March 31, 2005, but applicant argues that claims 13-15 should not have been withdrawn because a generic claim remains pending. This is not proper grounds rejoining claims or traversing the withdrawal of claims directed to non-elected species. However, because applicant argues the withdrawal, claims 13-15 have been rejoined and are now rejected as being indefinite because it is uncertain how claims 13-15 are readable on the elected Species A.

Claim 23 recites a “first means for shaping...,” a “second means for directing...,” and a “third means for adjusting...” The means plus function language satisfies the three prong test determining whether 35 U.S.C. 112, 6<sup>th</sup> paragraph has been invoked. Yet, the specification provides no guidance as to the scope of each means plus function recitation. The metes and bounds of the claim cannot be determined. Claims 23-29 have not been considered under prior art.

***Claim Rejections - 35 USC § 102***

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7. Claims 1, 3, 5, 6, 7, 8, 9, 10, 11, 12, 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Laauwe (3,990,640).

Laauwe discloses a spray nozzle comprising: a flexible spray tip 12 defining a spray orifice 13; a metering member 16; a driving assembly 23; a nozzle body 9.

8. Claims 1, 3, 4, 10, 12, 16, 17, 18, 19, 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Zelna (3,711,020).

Zelna discloses a spray nozzle comprising: a flexible spray tip 2; a metering member 9; a driving assembly 6 (spring, column 3, lines 61); a nozzle body 1.

### ***Claim Rejections - 35 USC § 103***

9. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zelna (3,711,020).

Zelna discloses the limitations of the claimed invention with the exception of the weld. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have replaced the cap and threads of Zelna with a weld to create a thigh seal.

### ***Allowable Subject Matter***

10. Claim 2 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

11. Applicant's arguments filed January 9, 2006 have been fully considered but they are not persuasive.

Applicant argues that the "means for shaping" can be easily determined by paragraphs [0034] and [0035]. Applicant asserts that the shaping is provided by the configuration of the orifice in the flexible spray tip. While paragraph [0034] states that spray tip 20 includes a spray shaping portion 24 extending distally from a flange 34, paragraph [0035] further discloses that slot 26 and orifice 28 may play a key role in defining various spray characteristics. It further discloses that size and shape of orifice 28 as well as angle of slot 26 are controlled by leveraging members 36, which in turn is maintained on metering member 60 by sealing band 38. The specification fails to define the metes and bounds of "means for shaping." For example, it is uncertain whether the means plus function language encompasses just the spray shaping portion 24 which includes the slot 26 and orifice 28, or if it also includes the leveraging member 36 and sealing band 38. It may even possibly include the metering member 60 and the diaphragm 82 because they all function in concert to shape the stream of pressurized fluid.

Applicant argues that the "second means for directing pressurized fluid into the first means" is clearly outlined in paragraph [0036] as the housing and related structures. Again, paragraph [0036] discloses the elements of the device and how the device functions but fails to define the metes and bounds of the "second means." Applicant states that it clearly defines the housing and related structures. If so, does it

include the housing (presumably the nozzle body 40; applicant does not use the term “housing” to describe his invention in the specification) and any other element which the pressurized fluid comes into contact with, excluding the first means? Presumably, any element exposed to the pressurized fluid directs the fluid. If so, wouldn't the third means be included in the second means. Additionally, if the second means is clearly defined in the specification, application should be able to definitely list the elements which make up his second means rather than stating “housing and related structures.” What is encompassed by the term “related structures.”

Applicant argues that the “third means for adjusting the first means” is the metering member 60. Yet, the metering member 60 and diaphragm 82 working in conjunction to adjust the first means in response to the pressured fluid. The multitude of possible interpretation should be evidence that the specification fails to define the metes and bounds of the means plus function language of claim 23. Therefore, any assertion of the scope of the means plus function language would be either an arbitrarily broad or narrow interpretation of the claim unsupported by the specification.

Applicant argues that the nozzle tip 12 of Laauwe is not flexible. While Laauwe discloses that the plastic body 9 is substantially rigid, he does not disclose that it is completely rigid. Even a substantially rigid plastic body has some amount of flexibility, no matter how minute. Applicant's claim does not define the degree of flexure of the flexible spray tip. It merely recites that the flexible spray tip is constructed and arranged to flex, thereby altering the shape of the spray orifice. The spray tip of Laauwe has this capability.



Applicant argues that Lauwee does not disclose a metering member. Lauwee discloses a metering member 16. The metering member 16 controls the opening and closing of orifice 13 and therefore the amount of fluid going to tip 12.

Applicant alleges that driving assembly 23 does not meet the limitations of the pending claims. Applicant fails to provide any supporting reason or evidence why driving assembly does not meet the limitations of the pending claims.

Regarding applicant's argument directed to Zelna, applicant fails to specifically identify the claimed limitations that are not met by Zelna and provide supporting evidence for such a conclusion.

### ***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

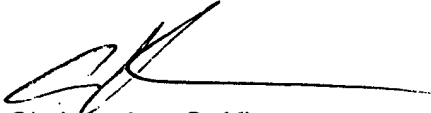
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. Kim whose telephone number is (571) 272-4905. The examiner can normally be reached on Monday - Thursday, 6:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on (571) 272-4919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher S. Kim  
Primary Examiner  
Art Unit 3752

CK